

Case No. 1,536.

BLEEKER v. BOND.

[4 Wash. C. C. 322.]¹

Circuit Court, E. D. Pennsylvania.

Oct. Term, 1822.

UNITED STATES MARSHALS—SALE OF REALTY—APPLICATION OF PROCEEDS.

The marshal who sells certain property under a venditioni exponas, has no power to pay to the tax collector the arrears of taxes due on the property sold, out of the proceeds of other property sold under the same writ.

At law. Rule upon the marshal, at the instance of the administrator of Bond, to bring the residue of the money in his hands into-court. The case is as follows. Under a venditioni exponas, which issued in this cause, all the real estate of which Bond died seised, and which had been levied upon by virtue of the writ of fieri facias, was sold by the marshal, to satisfy the judgment tender which the process issued. Amongst the property so sold, was a house which had been devised to the said Bond by his wife, subject, however, to the payment of \$2000 to a Sirs. Moor. Upon this house there were certain taxes due to the state. The house was purchased by Mrs. Moor at the marshal's sale at the price of \$2, which being insufficient to pay the taxes due upon the property, the marshal paid them to the tax collector out of the money for which he had sold the rest of the property of Mr. Bond. The question was, whether the marshal was justifiable in making such payment? [Rule made absolute.]

Joseph R. Ingersoll, in support of rule. Mr. Ewing, contra.

WASHINGTON, Circuit Justice. Whether taxes are by the laws of this state a lien on the property upon which they are assessed, is a question which I do not mean to decide in this case, nor is it necessary. For if they be a lien, the property chargeable with the taxes having been sold for comparatively nothing, the marshal had nothing, or in more correct language, he had but \$2 out of which to discharge the lien. But whether a lien or not, he had no authority to pay the taxes due upon that property, out of funds in his hands raised by the sale of other property of the intestate under the venditioni exponas. The duty of the marshal was to pay over the money remaining in his hands, and leave the collector to resort to the administrator for the taxes due from his intestate's estate. The marshal having improvidently paid the taxes to the collector, must look to him to-refund it. Rule made absolute.

[NOTE. For trial and verdict in this case, see Case No. 1,534. For proceedings to set aside venditioni exponas, see Id. 1,535.]

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]